

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C.416

BILL NUMBER: A-3587

**DATE OF
INTRODUCTION:** 05/24/01

SPONSOR: Assemblymen Felice
and Thompson

**DATE OF
RECOMMENDATION:**08/13/01

IDENTICAL BILL:

COMMITTEE: Assembly Solid and Hazardous Waste

DESCRIPTION:

Amends the exemption provided in N.J.S.A. 54:32B-8.15 to include the sale of returnable plastic containers and pallets.

ANALYSIS:

This bill would completely remove, in certain instances, N.J.S.A. 54:32B-8.15's historic limitation to containers that are (1) non-returnable and (2) used in a manner that is merely incidental to delivery of a product. It would remove these two limitations, however, solely for two categories of packing supplies: plastic containers and pallets. A previous amendment, enacted in January 2000, removes these limitations with regard to containers used in a farming enterprise. However, the special favorable treatment afforded to farmers is supported by some strong farm business preservation policy considerations which supported the enactment of a "farming" provision in the packing supplies exemption. In the present case, on the other hand, we find no overarching public policy reasons to provide a broader exemption for plastic containers and pallets than for all other types of containers and wrapping and packing supplies used in commerce.

While the statement accompanying the bill says that it applies to *commercial* sales and use of returnable plastic containers and pallets, the actual language of the new subsection (b.) contains no such limitation to "commercial" sales and use. Thus, according to its plain language, the new exemption could apply to plastic residential garbage cans, plastic refrigerator containers for home use, pallets used to store items in a home basement, and a vast variety of other plastic containers and pallets sold for purely

personal or non-commercial use. There is no apparent compelling argument for such a broadly applicable exemption for plastic containers and pallets. Therefore, if the bill is intended to provide a tax benefit to businesses that use such containers, it is worded too broadly, since it could extend the benefit to both private and commercial purchasers and users of the containers.

But even if the language of the bill were amended to specify that the exemption will apply only to purchases for commercial use, it is puzzling why the State should choose to accord special treatment to *plastic* containers and pallets, above all others. There appears to be no policy reason to single out plastic items for such favorable tax treatment. Not all plastic containers are recyclable. Nor are all recyclable containers made of plastic; many are made of aluminum, paper, or glass. Thus, the bill appears designed to give a special competitive advantage to the plastic industry in the sale of a particular product, without serving any broad public purpose.

In addition, the expanded exemption would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and “fair”. When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for plastic containers and pallets would save an individual purchaser a fairly insignificant sum every year. However, the cumulative loss of revenue to the State could be substantial, leaving the State to find other means of generating the money lost as a result of an expanded exemption.

RECOMMENDATION:

Opposed.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 7

COMMISSION MEMBERS ABSTAINING: 0

COMMISSION MEETING DATE: 07/25/01